

103^D CONGRESS
2^D SESSION

H. R. 4787

To amend the Indian Gaming Regulatory Act, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 19, 1994

Mr. TORRES introduced the following bill; which was referred to the
Committee on Natural Resources

A BILL

To amend the Indian Gaming Regulatory Act, and for other
purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; REFERENCE.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Indian Gaming Regulatory Act Amendments of 1994”.

6 (b) REFERENCE.—Except as otherwise expressly pro-
7 vided, whenever in this Act an amendment or repeal is
8 expressed in terms of an amendment to, or repeal of, a
9 section or other provision, the reference shall be consid-
10 ered to be made to a section or other provision of the In-
11 dian Gaming Regulatory Act (25 U.S.C. 2701 et seq.).

1 **SEC. 2. DEFINITIONS.**

2 (a) CLASS II GAMING.—(1) Clause (i) of section
3 4(7)(A) (25 U.S.C. 2703(7)(A)) is amended—

4 (A) by striking “(if played in the same loca-
5 tion)”; and

6 (B) by striking “bingo, and” and inserting
7 “bingo (whether or not electronic, computer, or
8 other technologic aids are used in connection there-
9 with so long as the fundamental characteristics of
10 the game remain the same), and”.

11 (2) Clause (ii) of section 4(7)(A) (25 U.S.C.
12 2703(7)(A)) is amended by striking “that—” and all that
13 follows through “such card games.” at the end thereof and
14 inserting a period.

15 (3) Clause (ii) of section 4(7)(B) (25 U.S.C.
16 2703(7)(B)) is amended by inserting “, except electronic
17 or technological aids used in connection with class II
18 games,” after “game of chance”.

19 (4) Subparagraph (C) of section 4(7) (25 U.S.C.
20 2703(7)) is amended by striking “Chairman” and insert-
21 ing “Commission”.

22 (5) Paragraph (7) of section 4 (25 U.S.C. 2703) is
23 amended by striking subparagraphs (D), (E), and (F).

24 (6) Paragraph (8) of section 4 (25 U.S.C. 2703) is
25 amended by inserting at the end “and means manufactur-
26 ing and assembly of gaming devices (defined as gambling

1 devices by section 5 of the Act of January 2, 1951 (15
2 U.S.C. 1175)).”.

3 (b) COMPACT; ELECTRONIC FACSIMILE.—Section 4
4 of the Act (25 U.S.C. 2703) is amended by adding at the
5 end the following new paragraphs:

6 “(11) The term ‘Compact’ means the regulatory
7 regime for operating class III gaming entered into
8 by a tribe and the Secretary.

9 “(12) The term ‘electronic facsimile’ means a
10 copy of some or all of the fundamental elements of
11 a game, where the electronic or electromechanical
12 device alters the game rather than simply electroni-
13 cally replicating the fundamental elements of a
14 game.”.

15 (c) SECTION 6 OF PUBLIC LAW 101–301.—Section
16 6 of Public Law 101–301 (25 U.S.C. 2703 note; 104 Stat.
17 209) is repealed.

18 **SEC. 3. POWERS OF THE CHAIRMAN.**

19 Section 6(b) of the Act (25 U.S.C. 2705(b)) is
20 amended to read as follows:

21 “(b) Prior to taking any action set forth in subsection
22 (a) of this section, the Chairman shall, in good faith, con-
23 sult with the Tribe which has jurisdiction over the gaming
24 activity in dispute and attempt to resolve the dispute in
25 a manner that avoids such actions. Only after the Com-

1 mission has concluded that cooperative resolution has been
2 adequately pursued and that further consultation would
3 be futile, may the Chairman take such actions.”.

4 **SEC. 4. POWERS OF THE COMMISSION.**

5 Section 7 (25 U.S.C. 2706) is amended—

6 (1) in subsection (a)(2), by inserting “appro-
7 priate but not punitive” after “collection of”;

8 (2) in subsections (b)—

9 (A) in paragraph (1), by inserting “and
10 class III gaming, where a Compact so provides,
11 where gaming is” after “class II gaming”; and

12 (B) in paragraph (2), by inserting “and
13 class III gaming, where a Compact so provides,
14 where gaming” after “class II gaming”; and

15 (3) by striking subsection (c).

16 **SEC. 5. INTERIM AUTHORITY TO REGULATE GAMING.**

17 Section 10 of the Act (25 U.S.C. 2709) is repealed.

18 **SEC. 6. TRIBAL GAMING ORDINANCES.**

19 (a) CLASS II GAMING.—Subsection (b) of section 11
20 (25 U.S.C. 2710) is amended by amending subparagraph
21 (A) of paragraph (4) to read as follows:

22 “(A) A tribal ordinance or resolution may provide for
23 the licensing or regulation of Indian charitable class II
24 gaming activities on Indian lands up to the same level and
25 scope as permitted by tribal class II gaming. A tribal ordi-

1 nance or resolution may provide for the licensing or regu-
2 lation of class II gaming activities owned by any person
3 or entity other than the Indian tribe and conducted on
4 Indian lands, only if the tribal licensing requirements in-
5 clude the requirements described in the subclauses of sub-
6 paragraph (B)(i) and are at least as restrictive as those
7 established by State law governing similar gaming within
8 the jurisdiction of the State within which such Indian
9 lands are located.”.

10 (b) REGULATION OF CLASS II GAMING.—Subsection
11 (c)(3) of section 11 (25 U.S.C. 2710) is amended by in-
12 serting “, whether by management contract or otherwise,”
13 after “class II gaming activity” in the matter preceding
14 subparagraph (A).

15 (c) CLASS III GAMING.—Section 11(d) (25 U.S.C.
16 2710(d)) is amended—

17 (1) in paragraph (1), by amending subpara-
18 graphs (B) and (C) to read as follows:

19 “(B) located in a State where the requirements
20 of paragraphs (6)(A) and (B) are satisfied and the
21 gaming activity is eligible for inclusion in a Com-
22 pact, and

23 “(C) conducted in conformance with a Compact
24 that is in effect.”;

25 (2) in paragraph (2)—

1 (A) by striking “Tribal-State compact en-
2 tered into under paragraph (3) by the Indian
3 tribe” in subparagraph (C) and inserting
4 “Compact”;

5 (B) by striking “Tribal-State compact” in
6 subparagraph (D)(iii)(I) and inserting “Com-
7 pact”;

8 (3) by amending paragraph (3) to read as fol-
9 lows:

10 “(3)(A)(i) Any Indian tribe having jurisdiction over
11 the Indian lands upon which a class III gaming activity
12 is to be conducted shall request the Secretary to enter into
13 a Compact with the tribe. Such request shall specify the
14 gaming activity or activities to be governed by the Com-
15 pact.

16 “(ii) Negotiations between the tribe and the Sec-
17 retary shall be completed within 180 days, subject to the
18 procedures required by paragraph (5)(B) that the Sec-
19 retary and the tribe shall utilize to resolve disputes arising
20 from negotiations.

21 “(iii) The Compact shall be effective upon publication
22 in the Federal Register by the Secretary.

23 “(iv) The Commission shall pursuant to section 7 of
24 this Act monitor class III gaming to the extent provided
25 by each Compact as published by the Secretary.

1 “(B) Any Compact entered into under subparagraph
2 (A) may include provisions relating to—

3 “(i) the adoption of any of the criminal and
4 civil laws and regulations of the Indian tribe, or with
5 tribal consent, of the State, that are directly related
6 to, and necessary for, the licensing and regulation of
7 such activity;

8 “(ii) the assessment by the Secretary of such
9 activities in such amounts as are necessary to defray
10 the costs of regulating such activity;

11 “(iii) remedies for breach of contract;

12 “(iv) standards for the operation of such activ-
13 ity and maintenance of the gaming facility, including
14 licensing; and

15 “(v) any other subjects that are reasonably re-
16 lated to the operation of gaming activities.”.

17 (4) by striking out paragraphs (4) and (5);

18 (5) by striking paragraph (8) and redesignating
19 paragraph (9) as paragraph (11); and

20 (6) by striking paragraphs (6) and (7) and in-
21 serting the following:

22 “(4) The provisions of section 5 of the Act of January
23 2, 1951 (25 Stat. 1175), shall not apply to any gaming
24 on Indian lands, or to manufacturing and assembly of
25 gaming devices on Indian lands.

1 “(5)(A) The United States district courts shall have
2 jurisdiction over—

3 “(i) any cause of action for a declaratory judg-
4 ment arising from the failure of an Indian tribe and
5 the Secretary to resolve disputes pursuant to para-
6 graph (3) of this section,

7 “(ii) any cause of action initiated by United
8 States or Indian tribe to enjoin a class III gaming
9 activity located on Indian tribes and conducted in
10 violation of any Compact entered into under para-
11 graph (3) that is in effect, and

12 “(iii) any cause of action initiated by the Sec-
13 retary or a tribe to enforce provisions of Compacts.

14 “(B) Notwithstanding any declaratory judgment ac-
15 tion pending under paragraph (6), a tribe and the Sec-
16 retary may negotiate and proceed to mediation under the
17 Act on issues not subject to the declaratory judgment ac-
18 tion.

19 “(6)(A) No later than 120 days after the Tribe has
20 notified the Secretary its election to negotiate a Compact,
21 or no later than such longer period as may be extended
22 in writing by the parties, either party may initiate an ac-
23 tion in Federal district court for a declaration whether a
24 gaming activity is subject to Compact negotiation under
25 this Act. In any such declaratory action, the court shall

1 declare that the gaming activity as a matter of Federal
2 law shall be the subject of negotiation if it finds that—

3 “(i) the gaming activity is not prohibited as a
4 matter of State criminal law and public policy; or

5 “(ii) if the gaming activity is subject to pros-
6 ecution and criminal sanction as a matter of State
7 law, the gaming activity meets one or more of the
8 following criteria—

9 “(I) its principal characteristics are sub-
10 stantially similar to principal characteristics of
11 gaming activities that are not subject to pros-
12 ecution and criminal sanction as a matter of
13 State law;

14 “(II) State law permits the gaming activity
15 subject to regulation;

16 “(III) as a matter of State law some per-
17 son, organization, or entity within the State
18 may engage in the gaming activity for some
19 purpose; and

20 “(IV) there is a pervasive pattern of non-
21 enforcement of the prohibition of such gaming.

22 “(B) The Compact also shall include such provisions
23 which best meet the objectives of this Act and are consist-
24 ent with any declaratory judgment issued pursuant to this
25 paragraph.

1 “(7)(A) Subject to subparagraph (B), if the parties
2 agree on a Compact, the Secretary shall adopt such Com-
3 pact and publish the Compact in the Federal Register.

4 “(B) The Compact referred to in subparagraph (A)
5 shall not be approved by the Secretary—

6 “(i) unless it contains provisions relating to in-
7 ternal controls of cash flow transactions, record-
8 keeping and reporting, accounting, security, and li-
9 censing of employees; and

10 “(ii) if the Compact does not violate—

11 “(I) any provisions of this Act;

12 “(II) any other provision of Federal law
13 that does not relate to jurisdiction over gaming
14 on Indian reservations; or

15 “(III) the trust obligations of the United
16 States to Indians.

17 “(8) Except for an appeal under chapter 7 of title
18 5, United States Code, publication of a Compact pursuant
19 to this subsection which permits a class III gaming activ-
20 ity shall be conclusive that such class III gaming is an
21 activity subject to negotiations where the gaming is to be
22 conducted, in any matter under consideration by the Com-
23 mission or a Federal court.

24 “(9) If the parties do not agree on a Compact under
25 this subsection before the date that is 45 days after the

1 expiration of the 180-day period with respect to the last
2 Tribal Compact proposal during the 180-day period, the
3 Compact shall be considered approved, but only to the ex-
4 tent that the Compact is consistent with the provisions
5 of this Act.

6 “(10) The Secretary shall publish in the Federal Reg-
7 ister notice of any Compact that has been approved, or
8 considered to have been approved, under this subsection.
9 Failure of the Secretary to publish pursuant to this sub-
10 section shall not affect the legality of the compact, which
11 shall be treated as if notice was timely and properly pub-
12 lished.”;

13 (7) in paragraph (11) (as so redesignated), by
14 striking “subsections (b), (c), (d), (f), (g), and (h)
15 of”.

16 **SEC. 7. REVIEW OF EXISTING ORDINANCES AND CON-**
17 **TRACTS.**

18 (a) MANAGEMENT CONTRACT.—Paragraph (3) of
19 section 12(a) (25 U.S.C. 2711(a)) is amended by striking
20 “all collateral agreements to such contract that relate to
21 the gaming activity” and inserting “all other agreements
22 that comprise whole or partial consideration of the parties
23 entering into the management agreement”.

24 (b) REVIEW.—Paragraph (1) of section 13(c) (25
25 U.S.C. 2712(c)) is amended by striking “all collateral

1 agreements,” and inserting “all related agreements involv-
2 ing the same parties, financing or leasing agreements, or
3 any agreement that pertains to significant management
4 functions or responsibilities,”.

5 **SEC. 8. CIVIL PENALTIES.**

6 (a) DATE FROM WHICH FINES RUN.—Paragraph (1)
7 of section 14(a) (25 U.S.C. 2713(a)) is amended by add-
8 ing at the end the following: “Fines imposed under this
9 paragraph may not run from before the date of notice of
10 violation.”.

11 (b) INFORMAL DISPUTE RESOLUTION.—Paragraph
12 (2) of section 14(a) (25 U.S.C. 2713(a)) is amended by
13 inserting “an opportunity for resolving disputes informally
14 and” after “provide”.

15 **SEC. 9. GAMING ON LANDS ACQUIRED AFTER DATE OF EN-**
16 **ACTMENT.**

17 (a) REPEAL OF CONCURRENCE BY GOVERNOR.—
18 Subparagraph (A) of section 20(b)(1) (25 U.S.C.
19 2719(b)(1)) is amended by striking “, but only” and all
20 that follows through “determination”.

21 (b) APPLICATION OF INTERNAL REVENUE CODE.—
22 Paragraph (1) of section 20(d) (25 U.S.C. 2719(d)) is
23 amended—

24 (1) by inserting “, and the exemption from
25 Federal taxes provided to the States with respect to

1 any gaming activity,” after “wagering operations”
2 the first place it appears; and

3 (2) by striking “or under a Tribal-State” and
4 all that follows through “effect,” and inserting “and
5 the reporting of cash transactions,”.

6 **SEC. 10. CRIMINAL PENALTIES.**

7 Subsections (c)(2) and (d) of section 1166 of title 18,
8 United States Code, are each amended by striking “Tribal
9 State compact” and inserting “Compact”.

10 **SEC. 11. APPLICABILITY OF FEDERAL LAWS TO CLASS III**
11 **GAMING.**

12 The Act (25 U.S.C. 2701 et seq.) is amended by add-
13 ing at the end the following:

14 “MISCELLANEOUS

15 “SEC. 25. (a) Class III gaming activities that are as
16 a matter of Federal law, lawfully in any jurisdiction on
17 the date of the enactment of this section, shall, notwith-
18 standing the provisions of this Act, remain lawful for pur-
19 poses of section 11(d)(6) of this Act.

20 “(b) For purposes of Federal law, the laws in effect
21 on the date that a tribe notifies the Secretary (or prior
22 to 1993, notified the State) that it wishes to negotiate a
23 Compact, shall be the basis for determining the scope of
24 gaming in section 11(d) of this Act for any Compact, or
25 for procedures in lieu of a compact.

1 “(c) For purposes of this Act, any change in State
2 law which occurs after the earlier of (1) a Tribe’s request
3 to the State for negotiations of a Tribal-State Compact
4 pursuant to this Act, or (2) the Tribe’s request to the Sec-
5 retary for a Compact pursuant to this Act, shall not have
6 any affect upon the terms and conditions of the Compact,
7 or upon the obligations of any government entity pursuant
8 to this Act.

9 “(d) Notwithstanding any provision of this Act, tribes
10 with Indian lands in the Eastern District of Washington
11 shall be entitled to conduct class III gaming activities
12 without a Compact, as long as such games are limited to
13 the nature and scope of gaming activities in effect on or
14 prior to November 1, 1994, so long as such activities are
15 otherwise in compliance with this Act.

16 “(e) Notwithstanding any provision of this Act, tribes
17 with Indian lands in Wisconsin shall be entitled to conduct
18 class III gaming activities consistent with the decision of
19 the Federal district court in *Lac du Flambeau Band of*
20 *Lake Superior Chippewa v. State of Wisconsin*, 770 F.
21 *Supp. 480 (W.D. Wis. 1991)*.”.

22 **SEC. 12. EFFECTIVE DATE.**

23 (a) TRIBAL-STATE COMPACTS.—Notwithstanding
24 any other provision of this Act or an amendment made
25 by this Act, all Tribal-State Compacts approved by the

1 Secretary of the Interior, and procedures for governance
2 in lieu of Compacts promulgated by the Secretary, under
3 the Indian Gaming Regulatory Act as in effect on the date
4 before the date of enactment of this Act, shall continue
5 to be fully operative and binding on the parties and shall
6 not be subject to revision unless agreed to by the parties.

7 (b) PENDING NEGOTIATIONS OF TRIBAL-STATE
8 COMPACTS.—Any tribe that requested a State to negotiate
9 a Tribal-State Compact prior to the enactment of this Act
10 and has not completed that process may request the Sec-
11 retary to enter into a Compact as specified under section
12 11(d)(3)(A) of the Indian Gaming Regulatory Act, as pro-
13 vided by the amendments made by this Act.

14 (c) CLASS III GAMING UNDER CERTAIN DEPART-
15 MENT OF THE INTERIOR REGULATIONS.—Notwithstand-
16 ing any provision of the amendments made by this Act,
17 tribes operating class III gaming pursuant to regulations
18 promulgated by the Department of the Interior and in ef-
19 fect on or before the date of enactment of this Act shall
20 be entitled to conduct class III gaming activities without
21 the approval of a Compact, consistent with such regula-
22 tions.

23 (d) DEFINITION.—For the purposes of this section,
24 the term “Tribal-State Compact” has the same meaning
25 given such term in the Indian Gaming Regulatory Act, as

- 1 such Act was in effect on the date before the date of enact-
- 2 ment of this Act.

○